

PROFESSIONAL SERVICES CONTRACT

Number _____

CFDA No. _____

This professional services contract ("Contract"), entered into by and between the **Indiana Housing and Community Development Authority** ("IHCDA" or the "State") and _____ (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor.

The duties of the contractor are set forth in **Exhibit "A,"** attached hereto and incorporated fully herein, and are summarized below:

2. Consideration.

The Contractor will be paid at the rate of _____ for _____ as described more fully in **Exhibit "B,"** attached hereto and made a part hereof. Total remuneration under this Contract shall not exceed _____.

3. Term.

This Contract shall take effect on _____ ("Effective Date") and remain in effect through _____ (the "Term").

4. Access to Records.

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during the Term, and for three (3) years from the date of final payment under this Contract, for inspection by IHCDA or its authorized designees. Upon request, copies shall be furnished at no cost to IHCDA.

5. Assignment; Successors.

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without IHCDA's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of IHCDA, provided that the Contractor gives written notice (including evidence of such assignment) to IHCDA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Audits.

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with I.C. 5-11-1, *et seq.* and audit guidelines specified by IHCDA.

Contractor is being paid for services performed under this Contract as an independent contractor and is not a sub-recipient of funds from IHCDA.

Following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by IHCD, if required by federal and/or state laws and regulations, pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A- 133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to IHCD in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. Contractor agrees to provide the Indiana State Board of Accounts and IHCD an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or IHCD to be in the best interests of IHCD. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

7. Authority to Bind Contractor.

The person signing for the Contractor represents that he/she has been duly authorized by Contractor to sign this Contract and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by IHCD.

8. Changes in Work.

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by IHCD. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

9. Compliance with Laws.

- A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by IHCD and the Contractor to determine whether the provisions of this Contract require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with IHCD as set forth in I.C. § 4-2-6 *et seq.*, I.C. § 4-2-7, *et. seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, IHCD may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under I.C. §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.
- C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed,

or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

- D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by IHCD, and agrees that it will immediately notify IHCD of any such actions. During the term of such actions, the Contractor agrees that IHCD may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.
- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by IHCD or its agencies, and IHCD decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. IHCD will consider any extenuating circumstances presented in Contractor's request and may, in its sole discretion, decide to allow Contractor to continue or receive work. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC 5-17-5.
- F. The Contractor warrants that the Contractor, its employees, agents, and subcontractors, if any, shall obtain and maintain all required certifications, permits, licenses, registrations and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for IHCD. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with IHCD.
- G. The Contractor affirms that, if it is an entity described in I.C. Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- H. As required by I.C. 5-22-3-7:
 - (1) The Contractor and any principals of the Contractor certify that:
 - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC 24-4.7 (Telephone Solicitation Of Consumers);
 - (ii) IC 24-5-12 (Telephone Solicitations); or
 - (iii) IC 24-5-14 (Regulation of Automatic Dialing Machines);in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
 - (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor
 - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

10. Condition of Payment.

All services provided by the Contractor under this Contract must be performed to IHCD's reasonable satisfaction, as determined at the discretion of the undersigned IHCD representative and in accordance with **Exhibit A** and all applicable federal, state, and local laws, ordinances, rules and regulations. IHCD shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation. As required by I.C. 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Controller of IHCD. As a further condition of payment, the Contractor shall

complete in full and return to IHCD A a federal Form W-9 (Request for Taxpayer Identification Number and Certification), the form of which is attached hereto as **Exhibit "C"** and made a part hereof.

11. Confidentiality of Information.

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of IHCD A.

The parties acknowledge that the services to be performed by Contractor for IHCD A under this contract may require or allow access to data, materials, and information containing Social Security numbers or other personal information maintained by or on behalf of IHCD A in a computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and IHCD A agree to comply with the provisions of I.C. 4-1-10 and I.C. 4-1-11. If any Social Security number(s) or personal information (as defined in I.C. 4-1-11-3) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract.

12. Continuity of Services. Intentionally omitted.

13. Debarment and Suspension.

- A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
- B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify IHCD A if any subcontractor becomes debarred or suspended, and shall, at IHCD A's request, take all steps required by IHCD A to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

14. Default by State.

If IHCD A, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

15. Disputes.

- A. Should any disputes arise with respect to this Contract, the Contractor and IHCD A agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay,

any additional costs incurred by IHCD or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim to or against IHCD for such additional costs.

- C. If a party to the Contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:
1. The parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and IHCD within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
 2. IHCD may withhold payments on disputed items pending resolution of the dispute. The Contractor shall not have the right to terminate the Contract based on the unintentional nonpayment by IHCD to the Contractor of one or more invoices not in dispute. The Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

16. Drug-Free Workplace Certification.

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to IHCD within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with IHCD for up to three (3) years.

In addition to the provisions of the above paragraph, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug

counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying IHCD A in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

17. Employment Option. Intentionally omitted.

18. Force Majeure.

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

19. Funding Cancellation.

When the Executive Director of IHCD A makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Executive Director that funds are not available shall be final and conclusive.

20. Governing Laws.

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in courts located in Marion County, Indiana.

21. Indemnification.

The Contractor agrees to indemnify, defend, and hold harmless IHCD, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses arising from or connected with any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. IHCD shall **not** provide such indemnification to the Contractor.

22. Independent Contractor.

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Except as provided in **Section 21**, neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

23. Information Technology Enterprise Architecture Requirement. Intentionally omitted.

24. Insurance.

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per occurrence and \$2,000,000 aggregate, unless additional coverage is required by IHCD. IHCD is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
2. Automobile liability with minimum liability limits of \$700,000 per occurrence and \$5,000,000 aggregate. IHCD is to be named as an additional insured on a primary, non-contributory basis.
3. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned IHCD representative a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.

2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. IHCD A will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify IHCD A under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.

Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling IHCD A to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to IHCD A before the commencement of this Contract.

25. Key Person(s). Intentionally left blank.

26. Licensing Standards.

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. IHCD A will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification or accreditation, the Contractor shall notify IHCD A immediately and IHCD A, at its option, may immediately terminate this Contract.

27. Merger & Modification.

This Contract contains the entire understanding between the parties regarding the subject matter hereof and no representations, inducements, promises or oral agreements not embodied herein shall be of any force or effect. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

28. Minority and Women's Business Enterprises Compliance.

The Contractor agrees to comply fully with the provisions of 25 IAC 5 and the Subcontractor Commitment submitted to the State. No changes may be made to the commitment without the written approval of the Minority and Women's Enterprises Division of IDOA.

The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE/ PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>AMOUNT</u>

The Contractor agrees to submit a copy of the agreement entered into between the Contractor and each MBE/WBE subcontractor where IHCDCA took the selection of the MBE/WBE by the Contractor into consideration when issuing the procurement award. The copy of the agreement must be submitted to the MWBE Division in IDOA within ninety (90) days of the execution of the contract between the Contractor and IHCDCA. The Contractor also agrees to send all amendments, changes, and terminations to these agreements to the MWBE Division in IDOA within ninety (90) days of their execution. Failure to provide a copy of the agreement or subsequent amendment, change, and termination may result in exclusion from future State procurements. If the Contractor is not excluded from future procurements, the actions or inactions of the Contractor with regard to the above will be taken into account in all phases and scoring in future procurements. In addition, the Contractor must obtain the approval of the Division before changing any MBE/WBE participation plan submitted in connection with this Contract.

29. Nondiscrimination.

This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

Pursuant to the Indiana Civil Rights Law, specifically including I.C. 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Contractor understands that IHCDCA is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

30. Notice to Parties.

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to IHCDCA shall be sent to:

**Indiana Housing and Community Development Authority
30 South Meridian Street, Suite 1000
Indianapolis, Indiana 46204**

With a copy to: **Mark J. Wuellner, General Counsel**

- B. Notices to the Contractor shall be sent to:
(Include contact name and/or title, name of vendor, specific address.)

31. Order of Precedence; Incorporation by Reference.

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by IHCD, (3) IHCD's RFP dated _____, (4) Contractor's proposal dated _____ in response to the RFP, and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

32. Ownership of Documents and Materials.

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to IHCD and all such materials will be the property of IHCD. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of IHCD, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by IHCD and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide IHCD full, immediate, and unrestricted access to the work product during the term of this Contract.

33. Payments.

All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by I.C. 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the IHCD Controller. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by I.C. 4-13-2-20.

34. Penalties/Interest/Attorney's Fees.

IHCD will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from IHCD's failure to make prompt payment shall be based solely on the amount of funding originating from IHCD and shall not be based on funding from federal or other sources.

35. Progress Reports.

The Contractor shall submit progress reports to IHCD upon request. The report shall be oral, unless IHCD, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring IHCD that work is progressing in line with the proposal or schedule, and that completion can be reasonably assured on the scheduled date.

36. Renewal Option.

This Contract may be renewed under the same terms and conditions, subject to approval of the IHCD Board of Directors, and in compliance with I.C. 5-22-17-4. The term of the renewed Contract may not be longer than the term of the original Contract.

37. Security and Privacy of Health Information.

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

38. Severability.

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

39. Substantial Performance.

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

40. Taxes.

IHCDA is exempt from most state and local taxes and many federal taxes. IHCDA will not be responsible for any taxes levied on the Contractor as a result of this Contract.

41. Termination for Convenience.

This Contract may be terminated, in whole or in part, by IHCDA whenever, for any reason, IHCDA determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination may continue. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. IHCDA will not be liable for services performed after the effective date of termination.

42. Termination for Default.

A. With the provision of thirty (30) days notice to the Contractor, IHCDA may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or

4. Perform any of the other provisions of this Contract.
- B. If IHCD A terminates this Contract in whole or in part, it may acquire, under the terms and in the manner IHCD A considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to IHCD A for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. IHCD A shall pay the contract price only for completed supplies delivered to and services performed for and accepted by IHCD A. The Contractor and IHCD A shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. IHCD A may withhold from these amounts any sum IHCD A determines to be necessary to protect IHCD A against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of IHCD A in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
- E. This Contract may be suspended and/or terminated immediately if the Contractor has breached, defaulted, or committed fraud under this Contract or another contract between the Contractor and IHCD A. Further, Contractor's breach or default of other agreements or obligations related to this Contract shall constitute a material breach of this Contract.

43. Travel. Intentionally omitted.

44. Waiver of Rights.

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither IHCD A's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to IHCD A in accordance with applicable law for all damages to IHCD A caused by the Contractor's negligent performance of any of the services furnished under this Contract.

45. Work Standards.

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If IHCD A becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, IHCD A may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

46. State Boilerplate Affirmation Clause.

IHCDA swears or affirms that it has not altered, modified changed or deleted the State's Boilerplate contract clauses (as contained in the 2011 OAG/IDOA Professional Services Contract Manual) in any way except for the following clauses:

10. **Condition of Payment.** Added "as required by I.C. 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the IHCDA Controller." Also added "As a further condition of payment, the Contractor shall complete in full and return to IHCDA a federal Form W-9 (Request for Taxpayer Identification Number and Certification), the form of which is attached hereto as **Exhibit "C"** and made a part hereof" in order to incorporate requirements issued by IHCDA's Finance Department.
11. **Confidentiality of Information.** Added "on behalf of IHCDA in a computer system or" into the first sentence in the second paragraph of this section after the phrase "or other personal information maintained by or".
21. **Indemnification.** Substituted "arising from or connected with" for "caused by."
22. **Independent Contractor.** Inserted "Except as provided in Section 21 above," before the sentence beginning with "Neither party shall assume."
24. **Insurance.** Changed paragraph A(1) to substitute "with minimum liability limits of \$700,000 per occurrence and \$2,000,000 aggregate," instead of referencing "per person" and "per occurrence." The reduced coverage amounts are acceptable to IHCDA, given that the higher limit of \$5,000,000 would require multiple layers of insurance coverage at a cost that is disproportionate to the contract amount.
27. **Merger & Modification.** Substituted "This Contract contains the entire understanding between the parties regarding the subject matter hereof and no representations, inducements, promises or oral agreements not embodied herein shall be of any force or effect" for the first two sentences in the State's boilerplate.
33. **Payments.** Substituted "IHCDA Controller" for "Indiana Auditor of State," because IHCDA manages its funds separately from the State.
41. **Termination for Convenience.** Substituted "may continue" for "becomes effective" in lines 4-5 of this paragraph.

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NON-COLLUSION AND ACCEPTANCE

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, Contractor and IHCD A have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

(Contractor):

(Where Applicable):

By: _____

Attested By: _____

Printed Name: _____

Title: _____

Date: _____

**Indiana Housing and Community
Development Authority:**

By: _____

Printed Name: Sherry Seiwert

Title: Executive Director

Date: _____